

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RHADAMES JIMENEZ,

Petitioner,

v.

KAREN HOGSTEN, Warden,

Respondent.

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CIVIL NO. 3:CV-05-1936

(JUDGE CAPUTO)

MEMORANDUM

I. Introduction

Petitioner, Rhadames Jimenez, a federal prisoner confined at the Allenwood Low Security Correctional Institution ("LSCI-Allenwood") in White Deer, Pennsylvania, commenced this *pro se* action with a petition for writ of habeas corpus (Doc. 1) filed pursuant to the provisions of 28 U.S.C. §2241. Respondent is LSCI-Allenwood Warden, Karen Hogsten. Petitioner claims that the Federal Bureau of Prisons incorrectly calculated his sentence, and he alleges that he is entitled to a credit for time spent in custody from December 24, 1999, to February 13, 2003. Respondent claims that the petition should be dismissed as a successive petition, and in the alternative that his sentence is correctly calculated. The petition has been fully briefed and it is ripe for disposition. For the reasons set forth, the petition will be dismissed as a successive petition.

II. Background

The facts are undisputed. Petitioner entered a guilty plea in the United States District Court for the Southern District of New York ("Southern District of New York") for the

offenses of possession of cocaine with intent to distribute and conspiracy to possess cocaine with intent to distribute. As a result of his plea, Petitioner was sentenced on February 14, 2003, to a term of imprisonment of 121 months, "with credit for time spent in federal custody since the date of his arrest on December 24, 1999." (Doc. 10, Ex. 1.)

Although he did not file a direct appeal, Petitioner did file a prior challenge to his sentence calculation in the Southern District of New York. *Jiminez v. New York*, 2005 WL 763075 (S.D.N.Y. Apr. 5, 2005); See Doc. 10, Ex. 2. The prior habeas petition was denied, and the instant petition ensued. Since the Court concludes that the issue raised in the present petition is the sentence calculation issue that has been reviewed and denied by the sentencing court, the petition will be dismissed.

III. Discussion

Habeas corpus petitions brought under § 2241 are subject to the Rules Governing § 2254 cases in the United States District Courts, 28 U.S.C. foll. § 2254 (1977) (applicable to § 2241 petitions under Rule 1(b)). See, e.g., *Patton v. Fenton*, 491 F. Supp. 156, 158-59 (M.D. Pa. 1979). Under Rule 9, "[b]efore presenting a second or successive petition, the petitioner must obtain an order from the appropriate court of appeals authorizing the district court to consider the petition as required by 28 U.S.C. § 2244(b)(3) and (4)." There is no doubt that this is a second or successive petition which falls within the scope of Rule 9. It is clear that Petitioner filed a prior petition for the relief he is requesting herein. Since Petitioner has not sought the requisite authority from the United States Court of Appeals for the Third Circuit to file this petition, the petition will be dismissed pursuant to

the provisions of Rule 9 of the Rules applicable to § 2254 habeas petitions. An appropriate Order follows.

Dated: June 2, 2006

/s/ A. Richard Caputo
A. RICHARD CAPUTO
United States District Judge

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ORDER

_____ **AND NOW, THIS 2nd DAY OF JUNE, 2006,** in accordance with the foregoing memorandum, **IT IS HEREBY ORDERED THAT:**

1. The petition for a writ of habeas corpus (Doc. 1) is **DISMISSED**, without prejudice to any right Petitioner may have to move the appropriate court of appeals for an order authorizing the district court to consider a successive habeas petition pursuant to 28 U.S.C. § 2244(b)(3) and (4).

2. The Clerk of Court is directed to close this case.

/s/ A. Richard Caputo
A. RICHARD CAPUTO
United States District Judge